

S.B.Civil Writ Petition NO.426/2004

Suraj Narayan

vs

Satya Narayan & Ors.

DATE OF ORDER : - 12.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. K.N.Joshi, for the petitioner.

Mr.Sandeep Saruparia, for the respondent.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 22nd Nov., 2003 by which the trial court rejected the petitioner's application filed under Section 148 read with Section 151 CPC.

The facts of the case are that plaintiff failed to file the written statement within the period as provided under Order 8 Rule 1 CPC and submitted an application on 10th Sept., 2003 seeking permission to file the written statement. The petitioner also submitted the written statement on the same day, i.e., on 10th Sept., 2003. The trial court rejected the petitioner's application and denied the petitioner to have his written statement on record.

Learned counsel for the petitioner submits that the suit was filed by the petitioner's brother for partition of the property. The petitioner was assured by the petitioner's brother that in view of the Will executed in favour of the defendant, the plaintiff will withdraw his suit, but instead of withdrawing the suit, the plaintiff proceeded with the suit. It is also submitted that till 10th May, 2003 to 25th August, 2003, the petitioner was sick also.

The trial court rejected the application of the petitioner on the ground that petitioner's advocate did not inform the court that petitioner was sick during the period of 10th May, 2003 to 25th August, 2003. The trial court also observed that in view of the amendment in the Civil Procedure Code, the courts should be conscious in exercising their power under Order 8 Rule 9 CPC as well as while adjourning the cases.

Learned counsel for the respondent submits that after the order dated 20th Nov., 2003, more than one year has already passed and since the other defendants also have not filed any written statement, therefore, the case is fixed for the evidence of the plaintiff and at this stage, the petitioner may not be permitted to file the written statement.

It appears from the facts of this case that the property rights are involved in the suit and the court has power to condone the delay under Section 148 of the Civil Procedure Code and the other courts also have extended the time for filing the written statement. Looking to the facts of this case, it will be just and proper to give an opportunity to the petitioner to have his written statement on record, which has already been filed. However, since the petitioner was negligent in filing the written statement, therefore, the respondent-plaintiff is entitled for the cost of Rs.2,000/-. The cost shall be paid to the plaintiff-respondent within a period of 15 days from today. The petitioner shall have also deposited the cost in the court, but within 15 days only.

In view of the above, the writ petition of the petitioner is allowed.

(Prakash Tatia), J.

c.p.goyal/-